IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2662 OF 2006

Shashikant Bapuso Devekar Applicant
versus
The State of Maharashtra Respondent

Shri Mundargi-Sr.Counsel for applicant.
Shri Hingorani-APP for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th August 2006

PC :

1. On the last occasion this matter was adjourned after hearing Shri Mundargi - Sr.Counsel appearing for the applicant and Shri Hingorani-APP, to enable the APP to produce the case diary. However, Shri Hingorani submits that the concerned I.O. is not present to give instructions. His instructions are that the investigation is now transferred to State CID and the case diaries are with the State CID along with other documents.

2. After the matter was argued and kept only for production of case diary and that too at the request of learned APP, I see no reason to postpone the hearing any further. More so, when

the matter was adjourned on 28th July 2006 and thereafter on 9th August 2006. Hence, request for adjournment is refused.

3. Shri Mundargi submits that the applicant has been arrested in connection with CR No.162 of 2005 registered at Rajarampuri Police Station, Kolhapur for offences punishable under sections 147, 148, 302, 427, 504, 506 R/W 149 of IPC.. The applicant is original accused no.5.

4. In the statement of complainant Sanjay Waskar it is stated that his brother Vilas Waskar had contested Kolhapur Municipal Corporation Elections in the year 2005. The present applicant also contested the same but lost the election. The applicant and his four followers who are other accused, had, therefore, enimity against the brother of complainant on account of defeat of the applicant in the elections.

5. The complainant further states that one Deepak Kumbhar has with his friend Bharat More gone to Rajarampuri area on 6th December 2005 in Ford Icon vehicle to inquire about repairs of a Maruti-800 vehicle. The vehicle belongs to Sanjay Waskar. At that time the applicant and

four others attacked them from behind the car. Sanjay Kolhe was having an iron bar in his hand and present applicant had a big stone in his hand. Further, it is the case that after seeing them, Deepak Kumbhar started running. At that time Sanjay Kolhe assaulted Deepak Kumbhar with the iron bar on his head which resulted in the falling down of Deepak Kumbhar. When he fell down the applicant hit the big stone on his head and Sachin Deshingkar was kicking him and Raju Patil was abusing and uttering words mentioned in the statement. The other person Bharat More ran away from the spot and he informed Sanjay Waskar about the alleged incident. All assailants ran away from the spot and the FIR was thus lodged. Deepak Kumbhar succumbed to the injuries while taking treatment.

6. The submission of Shri Mundargi is that in this case statements have been recorded on 6th December 2005, 7th December 2005 and 13th February 2006. He has produced copies of statements. However, it is his submission that when the FIR was lodged on 6th December 2005 and investigations were complete, a charge sheet was filed against four accused persons specifically leaving out the applicant herein. This was on

the basis of the opinion recorded by the Investigating Officer that enough materials are not there as far as present applicant is concerned, to file a charge sheet. In such circumstances, the applicant was not named in the charge sheet and was not brought to trial. However, subsequently, on the basis of statements recorded some time in the month of February 2006/March 2006 the applicant was arrested on 15th June 2006 and an additional charge sheet has been filed on 21st June 2006. The applicant applied for bail but the application has been rejected by the Trial Court. This is how the instant application has been preferred.

7. Inviting my attention to the statements recorded in the month of December 2005 and subsequently the submission of Shri Mundargi is that there is absolutely no change in the version inasmuch as all that is stated in the subsequent charge sheet, is with reference to the Municipal Elections and the alleged rivalry. On the other hand, inviting my attention to the earlier statements, it is his submission that allegation is that the incident took place on account of some financial dealings and differences and disputes because of the same. There is a

specific case in all statements that the persons concerned assembled at a beer bar and after consuming drinks together, there was exchange of words outside the beer bar where the alleged attack took place. He submits that neither is there any reference to the alleged car repairs nor the persons coming to collect the vehicle from the garage. There is a vast difference inasmuch as when the incident has taken place partly inside and outside the beer bar, a further version that the complainant's vehicle broke down and required repairs, is nothing but an after thought. It is an attempt to involve some how or other the applicant in the crime on account of political rivalry. For all these reasons, he submits that the application be allowed and the application be enlarged on bail.

8. On the other hand, Shri Hingorani - APP submits that this is a serious case. The offence alleged is of murder. There are eye witnesses. The statements recorded on 6th December 2005 and subsequently clearly refer to the elections and the fact that the applicant had contested the same against the complainant's brother. That there were groups and the deceased belonged to the complainant's brother group and the

applicants group was represented by Devekar, according to Shri Hingorani, is not in dispute. In such circumstances, no reliance can be placed upon the fact that the accused- applicant was not named in the earlier charge sheet. He submits that now the investigations are complete, statements recorded and additional charge sheet has been filed naming applicant with his role. In such circumstances and considering the gravity of the offence and the backdrop of the incident, this is not a fit case where the applicant can be enlarged on bail. The application be, therefore, rejected.

9. This matter had appeared before this Court on 28th July 2006 and on 9th August 2006. The applicant has invited my attention to the statements which are recorded on 6th December 2005 of Sanjay Waskar specifically referring to the applicant and that the applicant was having a stone in his hand by which he hit the deceased Deepak Kumbhar. In other words, the statement is that the applicant hit Deepak Kumbhar with the stone in his hand after he fell down pursuant to an assault by an iron stick by Sanjay Kolhe. On 10th February 2006 a further statement was given by Sanjay Waskar. In the earlier statement the

election details are not set out. There is a reference to the car breaking down and the deceased and his friend Bharat offering to get it repaired. Thereafter, there is a clear statement that the car was being driven by Sanjay Waskar and was taken to garage for repairs. The car was parked opposite the beer bar. Deepak Kumbhar got down from the car and was standing in front of the same. Sanjay Waskar went inside the garage and on finding that there is no mechanic in the garage, came back near the car and at that time at about 4.45 a.m. the incident took place. In his further statement recorded on 10th February 2006 he has stated that his friend Bharat More and cousin Deepak Kumbhar came to him and they took his Ford Icon vehicle to Rajarampuri to find out whether another vehicle, a Maruti Car, which is being repaired, has been completely repaired or not. It is at about 5.15 p.m. that Bharat More came to his house and informed him about the incident. In the first statement it is stated by Sanjay Waskar that he was driving the car. In the second statement the version is as above. It is upon both statements that the first charge sheet came to be filed. In the second statement there is reference to the applicant but it does not at all state that he was responsible for the

assault or in any way assaulted or hit the deceased with anything or by a stone. Thus, prima facie, there is an apparent contradiction in the two statements of the complainant - first informant. The contradiction is in material particulars inasmuch as initially he states that he was present when the assault on the deceased took place whereas the subsequent version is he was informed about the same. The other statements are also perused by me with the assistance of counsel appearing for both sides. This includes statement of Bharat More. In the statement of Bharat More the incident is the same. However, he does not say that Sanjay was present or driving the vehicle. In his other statement recorded on 13th December 2005 also, he does not say that Sanjay Waskar was present.

10. It is based upon this statement including that of Sanjay Waskar that the charge sheet came to be filed but not naming the applicant herein.

11. It is not clear from what has been shown to me that in the additional charge sheet the applicant is named on the basis of any further material other than the one which was collected prior to March 2006. In such circumstances,

prima facie, although the offence is serious, there being inconsistencies in the versions of material witnesses including about presence of the applicant-accused at the site and the applicant having been detained since 15th June 2006, this is a fit case where he deserves to be enlarged on bail. More so, when the prosecution has been unable to point out as to why and on what basis in the earlier charge sheet he was not named and in the second charge sheet he was included. There are no antecedents either.

12. Shri Mundargi has invited my attention to the averments in the application and has pointed out that the matter was already investigated including by the State CID.. Prima facie, therefore, on account of rivalry in the local elections the applicant has been roped in. the applicant has a permanent place of residence at Daulat Nagar. The deceased Deepak Kumbhar was residing at Kotwali, Tal.Panhala, Dist. Kolhapur, whereas, some witnesses are residing at Rajarampuri. It would, therefore, be proper considering that the matter arises out of disputes also from financial transactions, that the applicant does not enter the village of Kotwali, Tal.Panhala, Dist. Kolhapur and limits

of Rajarampuri Police Station until conclusion of trial. In the result, following order.

13. ORDER :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.162 of 2005 registered at Rajarampuri Police Station subject to furnishing a personal bond of Rs.25,000/- (Rs.Twenty five thousand only) with two local sureties in the like sum;

(ii) The applicant shall not enter the village limits of Kotwali, Tal.Panhala, Dist. Kolhapur and limits of Rajarampuri Police Station until conclusion of trial;

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)